

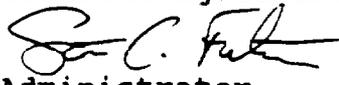


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: Criminal Enforcement Addendum to the Policy Framework
for State/EPA Enforcement Agreements

FROM: Scott C. Fulton 
Acting Assistant Administrator

TO: Regional Administrators
Assistant Administrators

This memorandum transmits the final version of the Criminal Enforcement Addendum to the Policy Framework for State/EPA Enforcement Agreements. The addendum, which was drafted under the auspices of the Steering Committee on the State/Federal Enforcement Relationship, reflects the extensive comments received from the Agency's programs and Regions, as well as from State and local law enforcement officials.

The expansion of Federal, State, and local criminal enforcement efforts has increased the need for a more systematic relationship among all levels of government. The Addendum is designed to help accomplish that goal. It identifies a number of activities and procedures to improve overall communications and coordination among Federal, State and local criminal enforcement officials, such as the designation of State and local law enforcement contacts to work with EPA's regional special agents, and greater EPA participation on Law Enforcement Coordinating Committees.

It also calls for continued Federal training of State and local criminal enforcement personnel, as well as the collection of more comprehensive State and local criminal enforcement data, so that the Agency can better report overall national environmental enforcement accomplishments.

It should be reiterated that the Criminal Enforcement Addendum does not alter current Federal, State or local enforcement authorities, nor does it create any formal "delegation" or "approval" of criminal enforcement programs to the States.

Any additional directives which may be needed to further implement the Criminal Enforcement Addendum will be included in the annual State/EPA Enforcement Agreements Guidance or other policy statements issued by the Office of Enforcement. EPA will soon reissue a complete Policy Framework, containing the final versions of both the Criminal and Multi-Media Enforcement Addenda, and any other planned revisions to the sections on oversight of State penalty assessment.

Attachment

cc: Deputy Administrator
Deputy Regional Administrators
Director, Office of Criminal Enforcement
Office of Criminal Investigations
Steering Committee on the State/EPA Enforcement
Relationship
National Environmental Enforcement Council
State/EPA Operations Committee
Regional Counsels
Enforcement Counsels
Compliance Program Directors

CRIMINAL ENFORCEMENT ADDENDUM TO THE POLICY FRAMEWORK
FOR STATE/EPA ENFORCEMENT AGREEMENTS

I. Introduction

Criminal prosecution is perhaps our most powerful environmental enforcement sanction and creates the strongest deterrence. EPA's criminal enforcement program will continue to expand as the Pollution Prosecution Act of 1990 is implemented. At the same time, State and local enforcement efforts against environmental crimes also are expanding. The overall expansion of the criminal enforcement effort makes the development of more systematic relationships among Federal, State and local environmental agencies and law enforcement units both desirable and necessary.

In order to enhance overall environmental protection by the concerted use of criminal enforcement authorities across all levels of government, the Criminal Enforcement Addendum to the Policy Framework for State/EPA Enforcement Agreements is designed to foster more interaction among the three levels of government engaged in environmental crimes enforcement.

II. Purpose of the Criminal Enforcement Addendum

The Criminal Enforcement Addendum describes procedures for expanding relationships among Federal, State and local enforcement units regarding the detection, prosecution, and reporting of environmental crimes. It recognizes, however, that a more "open" process will develop gradually as federal, state and local criminal enforcement personnel share more mutual experiences.

Therefore, while this Addendum identifies and encourages the participants to commit to utilize mechanisms to make coordination more effective and efficient, it does not and can not formally alter current respective Federal, State or local criminal enforcement authorities, nor does it create any formal "delegation" or "approval" of the Federal criminal enforcement program to the States.

III. Nature of the Criminal Enforcement Process

The development of Federal/State criminal enforcement relationships must recognize and reflect several institutional elements of the criminal enforcement process. Unlike civil enforcement, EPA's criminal enforcement program is not "delegated" to the States nor are State programs "approved." Both EPA and the States have their own independent criminal enforcement capability. Both entities have developed formal or

informal procedures regarding the exchange of "tips" and information about planned or on-going criminal investigations. Usual criteria for assessing State program performance do not apply to this process.

Criminal enforcement also is often decentralized and involves multiple federal, state, and local law enforcement agencies. The traditional requirements for grand jury secrecy and limiting information on a "need to know" basis historically have limited interaction between federal, state, and local law enforcement personnel.

IV. Areas of Criminal Enforcement Activity Covered by the Addendum

The general areas covered by the Criminal Enforcement Addendum include: communication and coordination, capacity building, and data collection and reporting of accomplishments among Federal, State, and local law enforcement personnel. This includes the following specific areas:

A. Exchange of Information Regarding Current or Planned Criminal Investigations:

The current consensus of surveyed EPA and State law enforcement officials is that the number of potential criminal cases overall is "manageable" and that the number of potential cases that both a State and EPA would be interested in prosecuting is not large. However, the total number of cases will continue to grow over the next several years and the overall expansion of the criminal enforcement effort will require the development of more systematic relationships among Federal, State and local law enforcement units in order to avoid potential duplication of investigative and case development resources.

B. Cross-Referral of Cases: There are currently few formal mechanisms for cross-referral or sharing cases. Both the States and the Federal government prosecute the majority of cases in which they have uncovered the initial lead, but recognize the need to get the most from limited resources at the Federal, State and local levels. Consistent with the criminal program's referral policy, EPA may refer potential criminal cases to State and local officials with appropriate jurisdiction for a criminal prosecution based upon such conditions as: whether Federal interests will be adequately protected if the case is prosecuted in the state or local jurisdiction; the strength of interest in the case expressed by the state or local enforcement program; the ability of the state or local program to adequately and successfully investigate and/or prosecute the case; the willingness of the state or local program to adequately

investigate and/or prosecute the case; and the probable sentence or deterrent effect which will result from prosecution by the state or local jurisdiction.

C. Coordination of Criminal Enforcement Training: The Agency will help provide expanded enforcement training to State and local law enforcement personnel, including assistance regarding resource levels, as feasible.

D. Assistance in Coordination with Civil Enforcement

Authorities: Coordination can help support subsequent State and Federal enforcement actions needed to address any environmental harm associated with criminal conduct and avoid potential conflicts. For example, if EPA takes a criminal lead based on a State referral, EPA can give relevant information to that State in support of its subsequent civil penalty case. Similarly, a State can provide information in support of Federal contractor listing or suspension/debarment activity.

E. Data Collection: The Regional Enforcement Associations collect and compile State and local criminal enforcement case information to assist in investigations and case development among its members. In addition to this function, both EPA and the States recognize the importance of including non-federal enforcement accomplishment information in order to provide a comprehensive picture of the nature of overall environmental criminal enforcement across the country.

V. Specific Actions to be Taken to Enhance Federal/State/Local Criminal Enforcement Relationships

A. Improved Coordination and Communication

1. Establishment of Criminal Enforcement Contacts within Each State to Serve as a Liaison with EPA's Area Office of the Criminal Investigations Division:

In order to enhance communications between the Area Offices of the Criminal Investigations Division (Area Office) and their States, EPA Regions should review the organization of criminal enforcement within each State and reach agreement with the State on one or more points of contact regarding criminal and related civil enforcement activity mutually affecting them for each of the four areas noted in Section IV. These contacts, whether located in the State Regulatory Agency, Office of the Attorney General, or elsewhere (including a local law enforcement unit, if appropriate), will be responsible for any further intra-state coordination or dissemination of information which may be required, as well any other interests which will be mutually agreed to by the Area Office and the State.

The survey of State criminal enforcement organization, recently conducted by the four Regional Enforcement Associations will provide useful information on the organization of criminal enforcement within a State so that appropriate contacts can be identified.

2. Participation of EPA's Area Offices in State and Local Law Enforcement Coordinating Panels

In addition to the general exchange of criminal enforcement information between the Area Office and the State and local liaison, specific "case-by-case" decisions regarding case development or prosecution lead and/or joint investigations can be effectively managed through mechanisms such as Law Enforcement Coordinating Committees (LECCs), environmental task forces, and quarterly meetings of the National District Attorneys Association (NDAA).

These coordinating mechanisms are expanding across the country and normally involve the participation of EPA, USAs, State environmental agency and office of attorneys general personnel, and district attorneys or county prosecutors. They provide forums with which to discuss the status of cases of mutual interest and to reach consensus on the respective lead or support roles and resources commitment of each organization, and to the extent possible, EPA will expand its interacting with these groups as resources permit.

EPA will, to the extent feasible, notify the appropriate State or local criminal enforcement agency when it has closed a criminal investigation without indictment or when it has declined to investigate a given incident criminally, so that entity may have the opportunity to review the incident as a potential criminal case. This does not include internal EPA consultations during case screening discussions as to the potential for criminal violations.

3. Participation of EPA's Area Offices in the Four Regional Enforcement Associations:

The four Regional Enforcement Associations (Northeast Environmental Enforcement Project, Southern Environmental Enforcement Network, Midwest Environmental Enforcement Association, Western States Hazardous Waste Projects) are extremely useful mechanisms for exchanging information about investigative techniques, statutory authorities, methods of criminal enforcement organization, and specific case development.

Continued Federal involvement with and support for the four Regional Associations will help promote the overall State/Federal relationship by providing additional opportunities for discussion and cooperation. The Agency's Office of Criminal Enforcement,

including both the Regional Agents and the National Enforcement Investigations Center (NEIC), will expand their participation in the Associations in order to help promote a national environmental crimes enforcement program.

4. Enhancing Relationships Among all Parties

EPA will make a long-term commitment to seek from all players in the criminal enforcement process, including USAs, FBI, DOJ, and States, the development and improvement of these communications and coordination mechanisms for criminal enforcement.

B. Enhancing State/Local Criminal Enforcement Capability

1. Training

The Agency's criminal enforcement program and NEIC will continue to provide training in criminal enforcement techniques to State and local personnel through the Federal Law Enforcement Training Center (FLETC) and the National Environmental Training Institute (NETI). States are encouraged to avail themselves of these training opportunities and EPA will, to the maximum extent possible, provide travel funds to ensure the participation of State personnel.

2. Technical Assistance

The Agency's criminal enforcement program shall, to the extent feasible, help deliver technical assistance, e.g., investigative assistance, unique lab services, expert witnesses, etc., which may be requested by State and local criminal enforcement programs.

The four Regional Enforcement Associations, as part of the NETI network of training providers, also will serve as vehicles for the delivery of training such as the Agency's BEN/ABEL (economic benefit of noncompliance/ability to pay) computer software, the Integrated Data for Enforcement Analysis (IDEA) system for multi-media enforcement, and basic and advanced curricula.

3. Survey of State Authorities

The Steering Committee's survey of State criminal enforcement programs, conducted by the Regional Enforcement Associations, will establish a baseline of information regarding State program procedures, capabilities, and resource needs. This data, which the Associations will keep current, will be used by the Steering Committee, the Office of Criminal Enforcement, and the Regional Enforcement Associations to discuss the most appropriate and effective ways to continue to help develop State and local criminal enforcement programs.

4. Increased Use of Joint or Pilot Criminal Enforcement Activity

Joint criminal enforcement activity serves a dual purpose both in enhancing relationships among Federal, State, and local criminal enforcement personnel and to enhancing State and local investigation and prosecution capabilities through the sharing of expertise and experience among law enforcement officials. To the extent that resources permit, the Federal government will seek to initiate and expand joint or coordinated criminal enforcement pilot activity with both State and local law enforcement units.

Such activity can consist of, e.g., cases with Federal prosecutorial lead and State investigative lead; Federal-lead cases with cross-deputized state personnel; or State-lead cases in which the Federal government provides scientific or technical support. Similarly, if a State agrees to delay its own civil penalty case in order to allow a criminal prosecution to proceed, the Federal government will be encouraged to subsequently provide appropriate information to the States that would be helpful in the pursuit of the State penalty action. In order to encourage Federal support for States, the Office of Criminal Enforcement will ensure there is recognition for SAICs for helping States with their own enforcement efforts (e.g., providing Federal technical and investigative support for State prosecutions).

In addition, the Enforcement in the 1990's Project has identified a number of ways in which to enhance the role of local governments in the civil and criminal environmental enforcement of selected environmental programs (e.g., UST, EPCRA). The Project also made recommendations regarding "networking" and training to enhance local government criminal enforcement roles. During the next several years, the Agency will work with the Regional Associations and the National Association of District Attorneys (NDAA) to review those recommendations and to implement those with the best prospects for enhancing local government participation in the enforcement of environmental laws.

5. Strategic Planning

The EPA CID Area Office and the State criminal enforcement liaison will be encouraged to participate in the annual Region/State strategic planning process to identify environmental and noncompliance problems toward which the State might better target its own criminal enforcement efforts. The Agency also will provide access to the States on the Integrated Data for Enforcement Analysis (IDEA) capability, as a tool for targeting both civil and criminal enforcement. The Agency will use the Four Regional Enforcement Associations as vehicles for training State and local personnel in the use of IDEA.

C. Data Collection and Reporting

While this Criminal Enforcement Addendum does not introduce any new formal reporting requirement of State or local criminal enforcement data, it identifies the following mechanisms and opportunity for enhanced data collection and reporting.

1. Environmental Crimes Data Collection

Lack of an accurate and comprehensive compilation of State environmental law enforcement accomplishments represents a major impediment in EPA's efforts to report overall national environmental enforcement achievements. EPA will work through the four Regional Enforcement Associations to develop comprehensive information regarding State and local criminal enforcement activity. The Associations have developed networked computer systems that provide, among other features, comprehensive case information, including a contact for each case. This serves as a significant information resource by which State and local prosecutors and investigators will be able to compile information for enforcement cases.

One potential use of these systems is to indicate in general terms the level of criminal enforcement activity on the State and local level.

2. Press Releases

The Agency's enforcement communications strategy (currently under development) calls for the increased use of press releases and other forms of communications to enhance the deterrent effect of its enforcement actions. Agency press releases will mention significant roles that State or local law enforcement officials played in supporting federal law enforcement actions. Where appropriate, joint Federal-state press releases will be issued.

3. Federal and State Reporting of Accomplishments

As State and local criminal enforcement data become available, EPA will publicize both aggregate State and local criminal enforcement data and narrative examples of innovative or successful State and local activity in its annual National and Regional Accomplishment Reports. Key State criminal enforcement activity also will continued to be described in the National Environmental Enforcement Journal published by NAAG with the cooperation and support of EPA.

EPA also will reference State criminal enforcement activities and its significance in other enforcement reports and/or testimony developed for Congress and the public.